

CAUSE NO. 98-09717

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| PAT BARBER, | § | IN THE DISTRICT |
| | § | COURT |
| PLAINTIFF | § | |
| | § | |
| VS. | § | |
| | § | |
| TEXAS DEPT. OF TRANSPORTATION; CHAS. W. HEALD, P.E., EXEC. DIRECTOR OF TEXAS DEPT. OF TRANSPORTATION, in his official capacity; A. JAMES HENRY, III, INTERIM DIRECTOR, RIGHT-OF-WAY DIVISION, TEXAS DEPT. OF TRANSPORTATION, in his official capacity; MARIBEL P. CHAVEZ, P.E. ABILENE DISTRICT ENGINEER, TEXAS DEPT. OF TRANSPORTATION, in her official capacity; BLAIR W. HAYNIE, P.E., DIRECTOR OF TRANSPORTATION, PLANNING AND DEVELOPMENT, TEXAS DEPT. OF TRANSPORTATION, in his official capacity; THE ATTORNEY GENERAL OF TEXAS | § | OF TRAVIS COUNTY, TEXAS |
| | § | |
| DEFENDANTS | § | 201ST JUDICIAL |
| | § | DISTRICT |

**SUMMARY JUDGMENT ON DEFENDANT'S COUNTERCLAIM**

On March 3, 2000, the Court heard the motion for summary judgment filed in this cause by Defendant, TEXAS DEPARTMENT OF TRANSPORTATION, against Plaintiff, PAT BARBER. The Court, after examining the pleadings timely filed, the Defendant's motion for summary judgment and the responses and replies filed by each party, and the summary judgment evidence admitted for consideration, made the following findings:

That Defendant's counter-claim is a cause of action for a permanent injunction prohibiting Plaintiff from maintaining and requiring the removal of an illegal sign located in Mitchell County, Texas, along the north side of Interstate Highway 20 near mile point 980+94, on a tract of land abutting Interstate highway 20, a controlled-access freeway in the interstate highway system in violation of Texas Transportation Code Sec. 391.001 et seq. (Vernon Pamph. 1999).

[Filed in the District Court
of Travis County, Texas
MAY -5 2000
at 10:16 A.M.
Amalia Rodriguez-Mendoza]
000601

The Court further finds that Defendant is entitled to recover all court costs, costs of suit, and reasonable expenses, including administrative costs, in securing removal of the subject sign, and reasonable attorney's fees of $1,200.00 (One Thousand Two Hundred and No/100 Dollars) pursuant to section 391.034(c) of the Texas Transportation Code.

~~IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant, the State of Texas, by and through the~~

~~Texas Department of Transportation, is awarded a permanent injunction requiring Plaintiff, Pat Barber, to remove immediately the illegal sign described herein;~~

It is further ORDERED, ADJUDGED and DECREED that Plaintiff Pat Barber is permanently restrained and enjoined from displaying and maintaining the illegal outdoor advertising sign located in Mitchell County, Texas, along the north side of Interstate Highway 20 near mile point 980+94, on a tract of land abutting Interstate highway 20;

It is further ORDERED, ADJUDGED and DECREED that the Clerk of this Court shall issue a writ of injunction in conformity with the terms of this Order and that the same be served upon the Plaintiff Pat Barber;

It is further ORDERED, ADJUDGED, and DECREED that no bond shall be required of Defendant, State of Texas, for the issuance of this permanent injunction;

It is further ORDERED, ADJUDGED, AND DECREED that Defendant do have and recover courts costs, other costs incurred in this suit expended, and reasonable attorneys' fees of $1,200.00 (One Thousand Two Hundred and No/100 Dollars) against Plaintiff, Pat Barber;

It is further ORDERED, ADJUDGED AND DECREED that all writs and processes for the enforcement and collection of this Judgment or the costs of Court may issue as necessary.

All other relief not expressly granted herein is denied.

SIGNED THIS 5TH DAY OF May, 2000.

/s/ Mary Pearl Williams
JUDGE PRESIDING

**APPROVED AS TO FORM**
**AND PREPARED BY:**

/s/ Wm T. Higgins V
William T. Higgins
Assistant Attorney General
State Bar No. 00790879
Transportation Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2004
Fax (512) 472-3855

No.98-09717

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| PAT BARBER, | § | IN THE DISTRICT COURT |
| Plaintiff | § | |
| V. | § | |
| | § | OF TRAVIS COUNTY, |
| TEXAS DEPARTMENT OF | § | TEXAS |
| TRANSPORTATION, ET. | | § |
| AL. | § | |
| Defendants | § | 201ST JUDICIAL DISTRICT |

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT REGARDING ATTORNEY'S FEES**

Pat Barber, Plaintiff, files this Response to Defendants' Motion for Summary Judgement.[1]

I. PROCEDURAL BACKGROUND, HISTORY OF THE CASE, AND FACTS

Pat Barber erected an 8' x 16' political billboard on his private ranch adjoining Interstate 20, near Colorado City, Texas, on June 26, 1998. He put up the sign because of the number of vehicles of interstate travelers being searched by state police officers and his concern about the legality of those searches. The sign stated, "Just say NO to Searches," and had a phone number (915--728-5505) dedicated to an answering machine that related a two-minute public service message about citizens' constitutional rights regarding searches.

A few days after erecting of the billboard, the Texas Department

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[1] This response refers to Defendants collectively as "TxDot."

of Transportation (TxDOT) mailed a letter to Plaintiff, demanding removal of the billboard. TxDOT took this action even though many other roadside signs in the county had not been in compliance with the statute in question for many years.

Correspondence then began between Pat Barber and TxDOT officials. Mr. Barber argued his billboard was exempted from application of the Texas Highway Beautification Statute and, further, the statute, as applied by TxDOT, violated his free speech rights under the United States and Texas Constitutions.

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TxDOT officials disagreed with Mr. Barber's interpretation of the law and eventually set a final deadline of September 25 to remove the billboard, or TxDOT would pursue legal remedies to remove the billboard. On August 28, 1998, Pat Barber filed suit against TxDOT in this Court, asking for temporary injunction, declaratory judgment, and permanent injunction against the agency. A hearing was held in this Court on September 24, one day before TxDOT's threatened enforcement deadline. Judge Covington, 201st Judicial District Court of Travis County, requested briefs, took the matter under advisement and ordered the State to stay any attempted enforcement of the statute at bar against Mr. Barber until further order of the Court.

On October 6, 1998, the Court issued a temporary injunction prohibiting attempted enforcement of the statue against Mr. Barber, pending outcome of this suit and until a determination on the merits. The Court found it was probable that Mr. Barber would prevail on his claim that the statute violated his constitutional free

speech rights, and that Mr. Barber's political message could not be communicated to its intended audience in any other practical manner.

Over a year later, on October 25, 1999, a hearing was held on each parties' Motion for Summary Judgment. Another Travis County district judge, Judge Mary Pearl Williams, who was newly assigned to the case, indicated orally, from the bench, her intention to grant the State's motion and to deny Mr. Barber's motion concerning the constitutional issues. She further indicated her intention to dissolve Judge Covington's temporary injunction restraining TxDOT enforcement action regarding the removal of the billboard.

Shortly thereafter, and before any judgment or order was signed, Mr. Barber's attorney asked the State's attorney if TxDOT would postpone any attempted enforcement action to remove the billboard until the constitutional issues could be resolved on appeal. The State's attorney declined. Therefore, on November 4, 1999, Mr. Barber voluntarily removed his billboard from his property before the order was signed on November 23, 1999, regarding the October 25th summary judgments hearing.